

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHANBUNTHAIT PROEUNG,

Petitioner,

2:02-cv-0626-GEB-JFM-P

vs.

GEORGE M. GALAZA, Warden,

Respondent.

ORDER

Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus. On May 25, 2006, petitioner filed a request for extension of time to file a request for certificate of appealability. On June 9, 2006, petitioner filed a notice of appeal and a request for certificate of appealability.

The Federal Rules of Appellate Procedure govern the court's ability to extend the deadline to file an appeal:

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

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(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

Fed. R. App. P. 4(a) (5).

In the instant case, judgment was entered in this action on May 2, 2006. Petitioner's May 25, 2006 request was timely made. Petitioner's request for extension will not exceed the limits of Fed. R. App. 4(a)(5); thus, petitioner's request will be granted and the June 9, 2006 notice of appeal will be deemed timely filed.

Petitioner has timely filed a notice of appeal of this court's May 2, 2006 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

For the reasons set forth in the magistrate judge's January 17, 2006 findings and recommendations, petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability should not issue in this action.

IT IS HEREBY ORDERED that:

1. Petitioner's May 25, 2006 request for extension of time is granted;

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1 2. Petitioner's June 9, 2006 notice of appeal and request for certificate of
2 appealability are deemed timely filed; and

3 3. Petitioner's request for issuance of a certificate of appealability is denied.

4 Dated: June 26, 2006

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6 /s/ Garland E. Burrell, Jr.
7 GARLAND E. BURRELL, JR.
8 United States District Judge
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